

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

In the matter of:

**Town of Discovery Bay
Community Services District**

Order No. R5-2016-0565

**No. R5-2014-0542 for
Administrative Civil Liability**

**Settlement Agreement and Stipulation for
Entry of Order; Order**

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Regional Water Quality Control Board Prosecution Staff (Prosecution Staff) and Town of Discovery Bay Community Services District (Discharger) (collectively Parties) and is presented to the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Discharger is the owner of a wastewater collection, treatment, and disposal system. The wastewater treatment plant provides sewerage service for the Town of Discovery Bay. Treated wastewater is discharged to Old River, a water of the United States.
2. The wastewater treatment plant is subject to Waste Discharge Requirements (WDRs) Order R5-2008-0179-01 which prescribes requirements for the discharge of wastewater from the Discharger's wastewater treatment plant. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the Discharger must comply.
3. The Discharger is alleged in Administrative Civil Liability Complaint R5-2014-0542 to have violated WDRs Order R5-2008-0179-01 Discharge Prohibition III.A from 19 February 2014 to 20 February 2014 when a portion of the influent wastewater bypassed primary treatment before mixing with the remaining wastewater in the secondary clarifier. This resulted in a discharge of 534,181 gallons of partially treated wastewater to Old River. Water Code section 13385, subdivision (a)(2) states that a person who violates a waste discharge requirement shall be liable civilly in accordance with this section.

4. Administrative Civil Liability Complaint R5-2014-0542 recommended imposing an administrative civil liability totaling \$271,320 for the alleged violation. The liability amount was determined using a factors analysis consistent with the Water Code and the State Water Resources Control Board Water Quality Enforcement Policy (May 2010) (Enforcement Policy). The Prosecution Team considered the methodology set forth in the Enforcement Policy for the alleged violations, as shown in Attachment A to the Complaint.

5. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

6. The Prosecution Team has reviewed the information presented by Discharger during the settlement meetings and has agreed that the Potential for Harm factor is minor because a percentage of the bypass volume was recirculated through the full treatment system. The Prosecution Team reviewed the penalty calculation and agreed to change the factor from 3 to 2, revising the penalty amount to \$180,828.

Section III: Stipulations

NOW, THEREFORE, in consideration of the execution of this Agreement and the releases, satisfactions, and promises made herein, it is hereby agreed upon and stipulated by the Parties as follows:

7. **Recitals Incorporated:** The Preceding Recitals are incorporated herein.

8. **Administrative Civil Liability:** The Discharger hereby agrees to pay the administrative civil liability totaling \$180,828. Payment to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board's execution of this Order. The check or money order shall reference ACLC Order R5-2016-0565 and be submitted to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888.

A copy of the check shall be also be submitted to:

Wendy Wyels, Supervisor
Compliance and Enforcement Section

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
wwwyels@waterboards.ca.gov

9. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.

10. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

11. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint (Covered Matters). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Section III, Paragraph 8.

12. **Public Notice:** The Discharger understands that this Stipulation and Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the Regional Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.

13. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

14. **No Waiver of Right to Enforce:** The failure of the Regional Water Board to enforce any provision of this Stipulation and Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulation and Order. Should the Discharger fail to comply with this Order, the Assistant Executive Officer may refer the matter to the State Attorney General for enforcement of the terms of this Order.

15. **Effect of Stipulated Order:** Except as expressly provided in this Stipulation and Order, nothing in this Stipulation and Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or any local agency from exercising its authority under any law, statute, or regulation.

16. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.

17. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties and approved the Regional Water Board.

18. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegate, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

19. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

20. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court. This explicit

waiver of rights includes potential future decisions by the Regional Water Board or its delegate related to this Order, including, but not limited to time extensions, completion of SEP milestones, and other terms contained in this Order.

21. **Discharger's Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

22. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.

23. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

24. **Effective Date:** The obligations under Paragraph 8 of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board which incorporates the terms of this Stipulation.

25. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

26. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: Andrew Altevogt
Andrew Altevogt, Assistant Executive Officer

Date: 9/28/16

Town of Discovery Bay Community Services District

By: Catherine Kutsuris
Catherine Kutsuris, General Manager

Date: September 7, 2016

Order of the Regional Water Board

27. The Central Valley Water Board incorporates Sections I through III, Paragraphs 1 through 26 by reference as if set forth fully herein.

28. In adopting this Stipulated Order, the Central Valley Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13385(e). The Central Valley Water Board's consideration of these factors is based upon information obtained by the Central Valley Water Board staff in investigating the allegations in the Complaint or otherwise provided to the Central Valley Water Board.

38. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

Pursuant to Water Code section 13323 and Government Code section 11415.60, IT IS **HEREBY ORDERED** on behalf of the California Central Valley Regional Water Quality Control Board.

Pamela Creedon
Pamela Creedon, Executive Officer

Date: 11/2/16